

REMARKS

Claims 1-40 are all the claims pending in the application. By this Amendment, Applicants amend claims 1, 5, 8-10, 12, 19, 20, 24, 27-29, 31, and 38 to better conform them to U.S. patent practice. The amendments were made to avoid antecedent basis issues, and for purposes of consistency. Applicants respectfully submit that the amendments do not narrow the scope of the claims in any way, and thus do not implicate any estoppel in the application of the doctrine of equivalents.

Double Patenting Rejection

Claims 1, 3-5, 7-16, 20, 22-24, and 26-35 are provisionally rejected on the ground of nonstatutory obviousness-type double patenting as allegedly being unpatentable over claims 1, 4-6, and 8-12 of copending U.S. Application No. 10/735,895 to Randriamasny *et al.* (“the ‘895 application”).

As this is a provisional rejection, based only upon pending patent applications, Applicants elect to defer addressing the merits of the provisional rejection until one of the cited pending applications issues. Since no patented claims are available to be analyzed at this time, no response on the merits is required by the Applicants. Applicants reserve the right to address the merits of the provisional double patenting rejection or submit a terminal disclaimer to obviate the rejection.

Claim Rejections - 35 U.S.C. § 102

Claims 1-4, 8, 9, 12, 17-23, 27, 28, 31, and 36-40 are rejected under 35 U.S.C. 102(e) as allegedly being anticipated by U.S. Patent No. 6,542,469 to Kelley *et al.* (“Kelley”). For *at least* the following reasons, Applicants respectfully traverse the rejection.

Claims 1-4, 8, 9, 12, 17-19, 39, and 40

Applicants respectfully submit claim 1 is not anticipated by Kelley. For example, claim 1 recites a method of determining data routing paths in a communication network, the method comprising, *inter alia*, calculating possible paths between a departure node and an arrival node, allowing for at least two chosen criteria, and then deducing an ideal solution from performances of said possible paths based on said criteria. Each possible path is assigned a value of interest allowing for said ideal solution, and the possible paths are then classified allowing for their respective values of interest. The Examiner contends that Kelley, in col. 6, lines 10-18, col. 8, line 57 to col. 9, line 20, col. 9, line 34 to col. 10, line 67, along with FIGS. 2 and 5A, discloses these features. See Office Action at page 7. Applicants respectfully disagree and submit that the teachings of Kelley are being misinterpreted in the Office Action.

With reference to col. 6, lines 10-18, the Examiner contends that since Kelley discloses that “[e]ach determined pair of maximally disjoint paths is classified into groups...one group is categorized with bandwidth over 100 M/s, and other group is categorized with bandwidth over 50 M/s”, Kelley discloses classifying the possible paths allowing for their respective values of interest as set forth in claim 1 (Office Action, pages 7-8). However, such an assertion does not take into account all the interrelationships between the claimed steps recited in claim 1.

For instance, the different bandwidth categories by which the disjoint paths are grouped in Kelley correspond closest to the values of interest. Claim 1 requires that the possible paths are assigned a value of interest allowing for the ideal solution. In Kelley, the quality of service classes disclosed in col. 6 cannot disclose the claimed ideal solution. This is because the claimed ideal solution is deduced from performances of the already calculated possible paths based on the at least two chosen criteria. On the other hand, the initial step in Kelley’s grouping technique is

deciding on a desired quality of service class, and thereafter, the maximally disjoint paths are determined for different levels of the desired quality of service class. For example, Kelley explicitly discloses that “[f]or a given network parameter, maximally disjoint paths are determined for each of different levels of the parameter. For example, one pair of maximally disjoint paths is determined as a function of bandwidths over 100 Mbits per second, and a second pair of maximally disjoint paths is determined as a function of bandwidths over 50 Mbytes per second” (Kelley, col. 6, lines 12-18). Clearly, the determination of the maximally disjoint paths is based on the given parameter, and it would not be possible to categorically determine the disjoint paths absent the desired levels of the network parameter.

Furthermore, regarding the claimed ideal solution, the Examiner states that the “pre-calculated paths are potentially or ideally selected if they also satisfied a user request” (Office action, page 7, emphasis added). It is not apparent from the rejection what step in Kelley’s method the Examiner is interpreting as the ideal solution. However, even based on a cursory review of the above statement, it is clear that Kelley cannot disclose the claimed step of deducing an ideal solution from performances of said calculated possible paths based on said at least two chosen criteria as required by claim 1. As the Examiner acknowledges, the pre-calculated paths in Kelley are ideally selected if they also satisfy a user constraint. That is, the actual performance of the maximally disjoint paths is not taken into account to deduce any ideal solution as set forth in claim 1. Rather, a user constraint is used to select a potential path from the pre-computed maximally disjoint paths.

In view of the foregoing, Applicants respectfully submit that Kelley does not disclose all the interrelationships between each of the claimed features of claim 1 in as complete detail as set

forth in claim 1. Accordingly, Applicants respectfully request withdrawal of the 35 U.S.C. 102(e) rejection.

Claims 2-4, 8, 9, 12, 17-19, 39, and 40 are patentable *at least* by virtue of their dependency.

Claims 20-23, 27, 28, 31, and 36-38

Claim 20 recites a device for determining data routing paths in a communication network, wherein the device includes processing means, the processing means comprising, *inter alia*, a calculation module which, for said nodes of said portion, calculates possible paths between a departure node and an arrival node, allowing for at least two chosen criteria, and then deduces an ideal solution from performances of said possible paths based on said criteria. An assignment module assigns each possible path a value of interest allowing for said ideal solution, and then classifies said possible paths allowing for their respective values of interest. Therefore, Applicants respectfully submit that claim 20 is patentable for *at least* reasons similar to those given above with respect to claim 1.

Claims 21-23, 27, 28, 31, and 36-38 are patentable *at least* by virtue of their dependency.

Claim Rejections –35 U.S.C. 103

Claims 5-6 and 24-25

Claims 5-6 and 24-25 rejected under 35 U.S.C. 103(a) as allegedly being unpatentable over Kelley in view of U.S. Patent No. 7,023,806 to Gunluk. For *at least* the following reasons, Applicants respectfully traverse the rejection.

Claims 5-6, and 24-25 depend on claims 1 and 20, respectively, and since Gunluk does not cure the deficient teachings of Kelley with respect to claims 1 and 20, Applicants respectfully submit claims 5, 6, 24, and 25 are patentable *at least* by virtue of their dependency.

Claims 7 and 26

Claims 7 and 26 are rejected under 35 U.S.C. 103(a) as allegedly being unpatentable over Kelley in view of U.S. Patent No. 6,646,989 to Khotimsky *et al* (“Khotimsky”). For *at least* the following reasons, Applicants respectfully traverse the rejection.

Claims 7 and 26 depend on claims 1 and 20, respectively, and since Khotimsky does not cure the deficient teachings of Kelley with respect to claims 1 and 20, Applicants respectfully submit claims 7 and 26 are patentable *at least* by virtue of their dependency.

Claims 13 and 32

Claims 13 and 32 are rejected under 35 U.S.C. 103(a) as allegedly being unpatentable over Kelley in view of U.S. Patent Application Publication No. 2003/0058797 to Izmailov *et al.* (“Izmailov”). For *at least* the following reasons, Applicants respectfully traverse the rejection.

Claims 13 and 32 depend on claims 1 and 20, respectively, and since Izmailov does not cure the deficient teachings of Kelley with respect to claims 1 and 20, Applicants respectfully submit claims 13 and 32 are patentable *at least* by virtue of their dependency.

Claims 14-16 and 33-35

Claims 14-16 and 33-35 are rejected under 35 U.S.C. 103(a) as allegedly being unpatentable over Kelley in view of Izmailov, and further in view of U.S. Patent No. 6,034,946 to Roginsky *et al* (“Roginsky”)¹. For *at least* the following reasons, Applicants respectfully traverse the rejection.

¹ Applicants note that claims 15, 16, 34, and 35 are not listed in the statement of rejection on page 14 of the Office Action, but the combined teachings of Kelley, Izmailov, and Roginsky are relied upon to reject the subject claims.

Claims 14-16 and 33-35 depend on claims 1 and 20, respectively, and since Roginsky does not cure the deficient teachings of Izmailov with respect to claims 1 and 20, Applicants respectfully submit claims 14-16 and 33-35 are patentable *at least* by virtue of their dependency.

Conclusion

In view of the above, reconsideration and allowance of this application are now believed to be in order, and such actions are hereby solicited. If any points remain in issue which the Examiner feels may be best resolved through a personal or telephone interview, the Examiner is kindly requested to contact the undersigned at the telephone number listed below.

The USPTO is directed and authorized to charge all required fees, except for the Issue Fee and the Publication Fee, to Deposit Account No. 19-4880. Please also credit any overpayments to said Deposit Account.

Respectfully submitted,



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